

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:17-CR-155

JAMSHID NORYIAN (01)
a.k.a. JAMES NORYIAN
DEHSHID NOURIAN (02)
a.k.a. DAVID NOURIAN
CHRISTOPHER RYDBERG (03)
MICHAEL TABA (07)

UNITED STATES OF AMERICA’S PROPOSED VOIR DIRE

Pursuant to Rule 24 of the Federal Rules of Criminal Procedure, the United States of America requests that the Court ask the jury panel the following questions, in addition to any other questions the Court may ask. Contingent questions for panel members who respond to the initial inquiry appear in *italics*.

General Questions

Preliminary: If any of you believe that your answer to any of the questions asked would be embarrassing to you personally if answered in the presence of everyone in the courtroom, please let me know and you will be allowed to reply to me and the attorneys privately.

1. Please raise your hand if you personally know Leigha Simonton, the United States Attorney, or any members of her staff. *Would that acquaintance affect your ability to be fair and impartial in this case?*

2. Please raise your hand if you personally know Ethan Womble, Edward Emokpae, or Alexander Pogozeleski, the attorneys representing the United States who are in charge of prosecuting this case. *Would that acquaintance affect your ability to be fair and impartial in this case?*

3. Please raise your hand if you personally know Jamshid Noryian, Dehshid Nourian, Christopher Rydberg, or Michael Taba, the defendants in this case. *Would that acquaintance affect your ability to be fair and impartial in this case?*

4. Please raise your hand if you personally know Jeff Kearney, Catherine Stanley, Dan Cogdell, Tom Melsheimer, Scott Thomas, Andrew Wirmani, Margaret Terwey, Erin Brennan, or Steven M. Wells, the defense attorneys in this case. *Would that acquaintance affect your ability to be fair and impartial in this case?*

5. Please raise your hand if you personally know someone affiliated with the law firms of any of the defense attorneys just mentioned: Kearney Law Firm; Winston & Strawn LLP; or Reese Marketos LLP. *Would that acquaintance affect your ability to be fair and impartial in this case?*

6. Please raise your hand if any of you are related to, or acquainted with, any one of the following witnesses that the United States intends to call and the defense states they may call. [Please have government and defense attorneys read witness lists.] *Would that relationship or acquaintance affect your ability to be fair and impartial in this case?*

7. There are many people on this jury panel. Please raise your hand if you recognize another member of the panel as being a relative, close friend, or associate. *Would that relationship or acquaintance affect your ability to be fair and impartial in this case?*

8. Please raise your hand if you have any philosophical, moral, or religious beliefs that would make you uncomfortable sitting in judgment of another human being. In other words, does anyone have a problem judging the guilt or innocence of another person based on their beliefs? *How would your beliefs affect your consideration of this case?*

9. Please raise your hand if you believe that a defendant cannot receive a fair trial in our judicial system. *What are your thoughts on that subject?*

10. Just as the defendants are entitled to a fair trial, so is the United States, represented here by attorneys from the Department of Justice. Is there anyone—because of something in your background or beliefs, something you’ve seen or heard on television or radio, or have read in the newspapers—who feels like he or she cannot give the United States the same fair trial in this type of case that he or she will give the defendants? *Please explain.*

11. Please raise your hand if you have ever had a personal interest in the outcome of a criminal case. In other words, if you, a member of your family, or a close friend have been the victim of a crime, accused of a crime (other than a traffic ticket), or a witness to a crime, please raise your hand.

a. *Please explain, e.g., were you a victim, accused of a crime, or a witness?*

- b. *What type of crime?*
- c. *How was the case resolved?*
- d. *When was it resolved?*
- e. *Were you satisfied with the way that the case was handled by law enforcement, prosecutors, and the court? Do you feel like you were treated fairly?*
- f. *Would this have any effect on your ability to be fair and impartial in evaluating this case and deliberating on a verdict?*
- g. *Would that experience affect your consideration of this case? How?*

12. Please raise your hand if you, your relatives, or your close friends have ever been a party to any legal action or proceeding involving the United States, its officers, agents, or employees. *Would that experience affect your consideration of this case? How?*

13. Please raise your hand if you, your relatives, or close friends have ever been involved as a witness, complainant, or the accused in a court proceeding of any kind. *Is there anything about that experience that would affect your ability to be fair and objective toward both the United States and the defendants in your consideration of the evidence in this case?*

14. Please raise your hand if you have legal education or training or have worked in the legal field. *What education, experience, and/or training have you had?*

15. Please raise your hand if you have served on a jury in a federal or state court trial. *Was it a civil or criminal case? What type of case was it? Were you able to reach a verdict? Were you the foreperson?*

16. At the conclusion of the case, jurors will have to make their decisions based on the law, which I will give to the jury in my instructions, even if the jurors disagree with the law. Please raise your hand if you believe you might not be able to follow my instructions regarding laws you disagree with. *What are your thoughts on that subject? What laws do you disagree with?*

17. The law provides that a defendant is innocent until proven guilty. Is there anyone who believes that a defendant is guilty simply because he or she has been charged with a crime? Is there anyone who cannot keep an open mind and wait to decide whether a defendant is guilty or not guilty until you have heard all of the evidence in the case?

18. The law provides that the United States must prove the guilt of each defendant beyond a reasonable doubt. Please raise your hand if you think that the United States' burden of proof should be higher, such as beyond a shadow of a doubt, or beyond any doubt. *What are your thoughts on that subject?*

19. If, after you have heard all of the evidence, the United States proves the guilt of the defendants beyond a reasonable doubt as to the crimes charged in the superseding indictment, would any of you have difficulty in returning a verdict of guilty?

20. It is my duty, as judge, to determine punishment if you find, after considering the evidence and my instructions as to the law you must apply, that the defendants are guilty of one or more counts in the superseding indictment. The law does not permit you to consider the issue of punishment because there are factors, having nothing to do with this trial, which will help me determine the appropriate sentence, if any. Is there anyone who thinks that he or she might take the potential punishment facing a defendant into account when deliberating on a verdict? *Is there anyone who would vote “not guilty” because of the possibility that I may impose a jail sentence or any other particular sentence?*

21. Please raise your hand if you, your relatives, or close friends, have had a bad experience with the United States Postal Service (or USPS-OIG), United States Department of Labor (or DOL-OIG), United States Department of Treasury, Internal Revenue Service (or IRS), United States Department of Veteran Affairs (or VA-OIG), the Department of Justice (or DOJ), the United States Attorney’s Office, or any other law enforcement agency (state or federal) that might influence your ability to be fair and impartial in this case. *Would that experience affect your consideration of this case? How?*

22. Please raise your hand if you have any negative feelings toward the federal government that might affect your ability to be fair and impartial toward the United States in your consideration of the evidence in this case. *What are those feelings? Do you have any negative feelings towards the Department of Justice?*

23. Would anyone either give less credibility to a law enforcement officer's testimony simply because they work in law enforcement or not consider the testimony of a law enforcement officer for any reason? *What are your thoughts on that subject?*

24. The law requires that you base your verdict on the facts as you find them to be from the evidence. The law does not permit you to consider any emotion, such as sympathy, prejudice, vengeance, fear, or hostility. *Is there anyone here who feels that he or she cannot put these emotions out of his or her mind when deliberating on a verdict?*

25. If you are selected as a juror, I anticipate that you will hear both direct and circumstantial evidence during the trial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist.¹ I will instruct you that the law makes no distinction between the weight you may give to either direct or circumstantial evidence, meaning that just because a fact is proven by circumstantial evidence, it can carry just as much weight as a fact proven by direct evidence. *Notwithstanding this instruction, does anyone believe that they would not be able to convict a defendant just because the defendant's guilt was established through circumstantial evidence?*

¹ Fifth Circuit Pattern Jury Instructions No. 1.01 (Criminal 2019).

26. Can you think of any reason, if you are chosen to sit on this jury, why you might not be able to render a fair and impartial verdict based solely upon the evidence and the law as I will instruct you at the conclusion of the case?

27. Is there anyone who is very excited at the prospect of serving on a jury in a federal criminal case? *Why do you feel that way?*

Case-Specific Questions

28. The defendants are charged in the superseding indictment with conspiring to commit health care fraud, health care fraud, conspiring to commit money laundering, money laundering, and conspiring to defraud the United States by impairing the lawful function of the Internal Revenue Service in the collection of income tax. Is there anyone who would have difficulty being fair and impartial to either the defendants or the government simply because of the nature of the case and the type of charges involved?

29. You will get more detailed instructions at the close of the case but understand that a “conspiracy” is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of “partnership in crime” in which each member becomes the agent of every other member. One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators, and even minor players can be part of the conspiracy if they knowingly agreed to do something unlawful. Please raise your hand if you’d have a problem convicting someone of a conspiracy crime because the person did not know all the details of the conspiracy. Please raise your hand if you’d

have a problem convicting someone of a conspiracy crime because the person did not know all the people involved in the conspiracy.

30. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict him or her for conspiracy even though the defendant had not participated before and even though the defendant played only a minor part. Please raise your hand if you'd have a problem convicting someone of a conspiracy crime when that person played a minor role in the conspiracy. Please raise your hand if you'd have a problem convicting someone of a conspiracy crime when he or she joined the conspiracy towards the end of it.

31. The United States need not prove that the alleged conspirators entered into any formal or written agreement, nor that they directly stated between themselves all the details of the scheme. Please raise your hand if you'd have a problem convicting someone of a conspiracy crime when there was no formal or written agreement setting forth the details of the conspiracy.

32. The United States need not prove that all of the persons alleged to have been members of the conspiracy but who are not on trial were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives. Please raise your hand if you have any concerns that the United States is not required to prove who each member of the conspiracy was. Do any of you have any concerns that the United States is not required to prove whether conspirators achieved the goal of the conspiracy?

33. In this case the United States may call as witnesses one or more individuals who have entered into a plea agreement with the United States and pled guilty to a crime. Plea agreements typically provide for the dismissal of some charges or the potential for a recommendation for a more lenient sentence. Such plea bargaining, as it is called, has been approved as lawful and proper, and is expressly provided for in the rules of this court.² Please raise your hand if you believe that plea bargaining should not be allowed. *Why do you say that?*

34. Please raise your hand if you would be unwilling to believe the testimony of someone who has entered into such a plea agreement. Is there anyone here who would give less credibility to such a witness's testimony or not consider the testimony of such a witness merely because they signed a plea agreement? *Is there anyone here who has problems with individuals who cooperate in government investigations?*

35. A jury in a criminal trial must determine the facts by considering only the evidence presented during the trial. Evidence includes the sworn testimony of witnesses and exhibits which have been admitted into evidence. Statements, objections, questions, and the arguments made by lawyers are not evidence. The function of lawyers in a trial is to point out things they think are significant or to call your attention to certain facts or inferences from the evidence. In the same manner, the statements, objections, questions, or arguments made by a defendant in the process

² Fifth Circuit Pattern Jury Instructions No. 1.16 (Criminal 2019).

of representing himself are not evidence. Please raise your hand if you doubt that you could base your verdict on only the admitted evidence. Would anyone here have trouble pushing out of their minds objections, evidence that the court instructed you not to consider, or attorney questions? Please raise your hand if you would have trouble following the Court's instruction that arguments by attorneys are not evidence.

36. Please raise your hand if you, an immediate family member, or close friend have ever been employed as, or by, a doctor, nurse, hospital, pharmacy, medical laboratory, or other healthcare provider or professional. *Who works in the medical field? What do you do for a living? Where do you work?*

37. Please raise your hand if you have ever had a negative experience with a health care provider that you believe will impact your ability to be a juror in this case. *Please explain.*

38. Please raise your hand if you have ever had a negative experience with a pharmacy that you believe will impact your ability to be a juror in this case. *Please explain.*

39. Please raise your hand if you or your family members use or have used compound medications or other prescription pain creams. *Please explain. If yes, was the compound medication prescribed by a medical professional? Were you consulted about the risks and benefits of the compound medication? Did you receive refills? Do you know how much your insurance was billed for the compound medication?*

40. Please raise your hand if you, any member of your immediate family, or any close friend ever worked for the Department of Labor or any other government entity that provides or administers health care services. *Please explain.*

41. Please raise your hand if you or any member of your immediate family are currently eligible for and using health care benefits from the Federal Employees Compensation Act. *Please explain who is eligible, when they became eligible, and the general nature of the benefits the person uses.*

42. Please raise your hand if you, your relatives, or close friends have had a good or bad experience with the Office of Workers' Compensation Programs, the entity that administers the Federal Employees Compensation Act, that might affect your ability to be fair and impartial in this case? *Please explain.*

43. Do you have any strong opinions (good or bad) about the Department of Labor or the Federal Employees Compensation Act generally? *Please explain.*

44. Please raise your hand if you believe that when a person steals a lot of money from the government, then the government or its agency is at least partially at fault for paying out the money. *What makes you say that?*

45. Have you, or any member of your family, or close friends, to the best of your knowledge, been a victim of health care fraud? In other words, was your health insurance ever billed for services that you did not need or that you did not receive?

46. Have you, or any member of your family, or close friends, to the best of your knowledge, ever been investigated for health care fraud, tax fraud, paying kickbacks, or money laundering? *If so, what were the circumstances?*

47. The defendants are charged in the superseding indictment with conspiring to defraud the United States by impairing the lawful function of the Internal Revenue Service in the collection of income tax. Does anyone here believe the federal government does not have the right to collect federal income taxes? Does anyone believe the federal government does not have the constitutional or legal authority to collect income taxes?

48. Has anyone here ever had a negative interaction with the IRS beyond simply having to pay taxes? Has anyone been audited by the IRS? *What was the outcome of the audit?*

49. Does anyone here have a strong opinion (good or bad) about the IRS or the federal government's collection of taxes? *Please explain.*

50. Please raise your hand if you have any problem with the government prosecuting someone who is alleged to have illegally evaded the collection of income taxes.

(Continued on the next page.)

Respectfully submitted,

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